No. 15,218

IN THE

United States Court of Appeals

For the Ninth Circuit

MARION B. FOLSOM, Secretary of the Department of Health, Education, and Welfare,

Appellant,

vs.

GRETTA N. PEARSALL,

Appellee.

On Appeal from the United States District Court for the Northern District of California, Southern Division.

BRIEF FOR THE APPELLANT.

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Appellee.

On Appeal from the United States District Court for the Northern District of California, Southern Division.

BRIEF FOR THE APPELLANT.

JURISDICTIONAL STATEMENT.

This appeal arises from an action instituted by the appellee as plaintiff in the District Court for judicial review of a final decision of the appellant's predecessor in office under Section 205(g) of the Social Security Act as amended (42 U.S.C.A. 405(g)), hereinafter designated as the Act. The complaint for review is set forth at pages 4-8 of the transcript of record, hereinafter designated as R. —, and the de-

cision of the appellant's predecessor is set forth at pages 8-10 of the transcript of the administrative proceedings, which has been stipulated as an exhibit herein (R. 39-40) and is hereinafter designated as Adm. Tr. —. Following the answer to the complaint (R. 9-13), motions for summary judgment were filed by the respective parties (R. 13-17) and heard by the District Court, which later issued a memorandum opinion ordering judgment for the plaintiff (R. 17-26). The defendant moved for reconsideration (R. 27-30), was duly heard, and the District Court issued a supplemental memorandum opinion affirming judgment for the plaintiff (R. 30-33). The opinions of the District Court have since been reported at 138 F. Supp. 939 (1956). Summary judgment was accordingly entered, denying the defendant's motion, granting the plaintiff's motion, reversing the decision of the defendant's predecessor, and remanding the proceedings to the Department of Health, Education, and Welfare, pursuant to the said Section 205(g) of the Act (R. 34-35). A notice of appeal therefrom was timely filed by the defendant (R. 35). Jurisdiction of this Court to hear and determine the appeal is conferred by the aforesaid Section 205(g) of the Act as amended and 28 U.S.C.A. 1291.

QUESTION PRESENTED.

Whether the District Court erred in holding that the present appellee, whose mother's insurance benefits as the unremarried widow of a deceased wage

earner had been terminated by her remarriage in accordance with Section 202(g) of the Act (42 U.S.C.A. 402(g)), was entitled to reinstatement of those benefits upon the annulment of her remarriage on the ground that such was a voidable marriage.

PRINCIPAL STATUTORY PROVISIONS.

Section 202(g) of the Act, supra, provides for mother's insurance benefits in pertinent part as follows:

> "The widow * * * of an individual who died a fully or currently insured individual after 1939, if such widow * * *
>
> (A) has not remarried
>
> * * *
>
> (E) at the time of filing such application has in her care a child of such individual entitled to a child's insurance benefit * * *
>
> shall be entitled to a mother's insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and *ending with the month preceding the first month in which any of the following occurs:* no child of such deceased individual is entitled to a child's insurance benefit, such widow * * * becomes entitled to an old age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes entitled to a widow's insurance benefit, *she remarries,* or she dies. * * *" (Italics ours.)

ABSTRACT OF THE CASE.

Title II of the Act (42 U.S.C.A. 401-419) provides a system of benefits for certain surviving dependents of deceased wage earners. Section 202(g) thereof, supra, provides in pertinent part that the widow of a deceased wage earner who has not remarried and who has in her care a child of the deceased wage earner is entitled to mother's insurance benefits beginning with the month in which she becomes so entitled and "ending with the month preceding the first month in which . . . she remarries . . ."

As of October, 1952, the appellee was awarded mother's insurance benefits as the unremarried widow of Delbert L. Pearsall, the deceased wage earner. Payment of such benefits was terminated as of the month of June, 1954, by reason of her marriage to one Frank Richard in that month in California, where both resided. Thereafter, on November 19, 1954, in the Superior Court of the State of California, in and for the County of Santa Clara, the appellee filed a "Complaint for Annulment and/or Divorce" against Richard (Adm. Tr. 25-28), alleging as a first cause of action that Richard had fraudulently represented to her that he intended to consummate the marriage but that in fact he never intended to and did not consummate the marriage (Adm. Tr. 25-26), and alleging as a second cause of action that Richard had inflicted on her a course of conduct resulting in mental cruelty (Adm. Tr. 26-27). The present appellee accordingly prayed for an annulment or, in the alternative, for an interlocutory decree of divorce. Upon default of said

Richard, the court on December 9, 1954 made and issued its decree of annulment (Adm. Tr. 30-31). The present appellee thereupon requested reinstatement of her mother's insurance benefits. The Bureau of Old-Age and Survivors Insurance, Social Security Administration, refused to reinstate such benefits and the present appellee thereupon secured a hearing before a referee of the Office of the Appeals Council (Adm. Tr. 15 et seq.). That hearing resulted in a decision that the present appellee was not entitled to reinstatement of mother's insurance benefits upon the annulment of her marriage to Richard (Adm. Tr. 8-10). She then requested a review of the referee's decision by the Appeals Council (Adm. Tr. 3), which was denied (Adm. Tr. 2). The decision thus became the final decision of the present appellant's predecessor.

As recited in the Jurisdictional Statement, supra, the present appellee next brought an action under Section 205(g) of the Act for judicial review of such decision in the District Court, which resulted in a reversal on the ground that upon termination by annulment of the present appellee's voidable marriage to Richard, she became entitled to reinstatement of mother's insurance benefits as of the date of the decree of annulment (R. 17-26; 30-33). This appeal followed.

STATEMENT OF POINTS TO BE URGED.

1. The District Court erred in holding that the present appellee had not "remarried" within the meaning of Section 202(g) of the Act, supra.

2. The District Court erred in holding that the present appellee's marriage to Frank Richard was not a "remarriage" within the meaning of said Section 202(g) of the Act.

3. The District Court erred in holding that the present appellee, who was the widow of Delbert L. Pearsall and who later remarried by marrying Frank Richard and thereafter obtained a decree of annulment in the Superior Court of the State of California, in and for the County of Santa Clara, was entitled to receive mother's insurance benefits as the "unremarried widow" of Delbert L. Pearsall.

4. The District Court erred in holding that the present appellee, who as the "unremarried widow" of Delbert L. Pearsall had applied for and was awarded mother's insurance benefits under the aforesaid Section 202(g) of the Act, and whose benefits terminated upon her marriage to Frank Richard, was entitled to reinstatement of such benefits by reason of the decree of annulment of her marriage to Frank Richard which she obtained as aforesaid in the Superior Court of the State of California, in and for the County of Santa Clara.

5. The District Court erred in denying the defendant's motion for summary judgment, in granting the plaintiff's motion for summary judgment, in reversing the decision of the defendant's predecessor,

and in remanding the proceedings to the Department of Health, Education, and Welfare.

SUMMARY OF ARGUMENT.

The word "remarries" in Section 202(g) of the Act, supra, is a term used in a Federal law, and its meaning must be interpreted in the context of that law. In this context, it is clear that remarriage of a widow receiving mother's insurance benefits is an event which terminates those benefits, and does not merely suspend them. The same Federal law provides that on the occurrence of certain other events deductions shall be imposed in the amount of the benefits—i.e., the benefits are suspended, but the Act specifically provides that on remarriage of the widow the benefits end.

While the validity of a marriage is determined by state law, the question of whether a voidable marriage constitutes a "remarriage" within the meaning of the Act is a question of Federal law. The court below failed to interpret the term "remarries" in the context of the Act and, on the basis of some state court decisions concerning the effect as between private parties of the annulment of a voidable marriage, reached a conclusion which is not only in error but rather illogical, in that it expressly recognizes that there was a "remarriage" (within the meaning of the Act) which existed until annulled, but holds that the "remarriage", once annulled, ceased to be a "remarriage" within the meaning of the Act and that

the annulment had the effect of reviving a right to benefits which had *ended* under the express provisions of the Act.

The District Court, in reaching its decision, misinterpreted the state court decisions upon which it relied, and particularly *Gaines v. Jacobsen,* 308 N.Y. 218, 124 N.E. 2d 290 (1954), and *Sefton v. Sefton,* 45 C. 2d 872, 291 P. 2d 439 (1955). These cases clearly hold that the annulment of a voidable marriage does not wipe such marriage off the record for all purposes.

The District Court's decision would result in inequities which the Act does not require. Under its decision, the effect of the annulment of a voidable marriage of a former beneficiary would vary from state to state, so that the former beneficiary's rights, and also the rights of other beneficiaries whose benefits are based on the same wage record, would depend on the fortuitous circumstance of identity of the state in which the annulment decree was secured. In the name of liberal construction, the District Court has misconstrued the Federal law, to the prejudice of the Social Security Trust Fund and other persons whose benefits depend on the same wage record, and has written into the Act a geographical diversity of rights of beneficiaries and former beneficiaries of the Federal law which neither Congressional policy nor language supports.

ARGUMENT.

I.

THE TERM "REMARRIAGE" IN SECTION 202(g) OF THE ACT IS A FEDERAL TERM AND MUST BE INTERPRETED IN THE CONTEXT OF THE ACT.

A. Remarriage is a termination event and not a deduction event.

Section 202(g), quoted in pertinent part above, provides that a mother's insurance benefits end with the month preceding the month in which any one of several events occur. For examples, if the child of the deceased wage earner dies or attains age 18, so that the child is no longer entitled to a child's insurance benefit, the mother's insurance benefits end; or if the widow becomes entitled to an old age benefit based on her own wage record, her entitlement to mother's insurance benefits ends. So too, when the mother remarries or dies, her entitlement to mother's insurance benefits ends. Since this is a case of first impression in the interpretation of such language of Section 202(g), appellant cannot cite the court to any precedent decisions. The language of the statute must be interpreted in the light of the over-all pattern of the Act and of its purpose. It is to be noted that Section 202(g) provides for the *ending* of mother's insurance benefits with the occurrence of the events specified in that section, and not for deductions from the mother's insurance benefits during the continuance of any of the events therein specified.

In contrast to the language of Section 202(g) is the language of Section 203(b) (42 U.S.C.A. 403(b)), which provides for *deductions* from benefits during

the months in which certain events occur. Section 203(b) provides that

> "Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under Section 202 for any month—
>
> (1) in which such individual is under the age of 72 and for which months he is charged with any earnings under the provisions of subsection (e) of this section;
>
> * * *
>
> (4) in which such individual, if a widow entitled to a mother's insurance benefit, did not have in her care a child of her deceased husband entitled to a child's insurance benefit;
>
> * * *"

Under Section 203(b), benefits are suspended during those months in which the beneficiary is charged with earnings in excess of the amounts allowed under Section 203(e) (42 U.S.C.A. 403(e)) or in which the beneficiary, if a widow entitled to mother's insurance benefits, does not have in her care a child of the deceased wage earner entitled to child's insurance benefits. Thus, appellee would have suffered deductions from her benefits for any month or months in which she had excess earnings or in which she did not have in her care the child of the deceased wage earner. When earnings ceased or when she again had the child of the deceased wage earner in her care, her benefits

would have been reinstated as of the month when the deduction event no longer existed. The language of Section 203(b) clearly so provides.

We submit that the contrast between the language employed by Congress in Section 202(g) and in Section 203(b) is too striking to be ignored or explained away, and that the decision of the court below directing the reinstatement of appellee to mother's insurance benefits as of the month of the annulment of her marriage to Frank Richard is judicial legislation in that it adds to the Act a provision for reinstatement which Congress significantly omitted. It would have been a simple matter for Congress to provide that a widow entitled to mother's insurance benefits would suffer deductions from her benefits during any month or months in which she was married, or to have provided that deductions would be imposed in the event a widow entitled to mother's insurance benefits remarried but that such deductions would cease when such remarriage was terminated by death, divorce or annulment. Congress, however, clearly provided in Section 202(g) that the widow's entitlement to mother's insurance benefits *ends* with the month preceding the month in which she remarries, and no provision is made in Section 202(g) or elsewhere for reinstatement of such benefits upon the termination of the remarriage, regardless of the means by which the remarriage is terminated.

Noteworthy also is the 1956 amendment to Section 202(e) of the Act (Section 113, P. L. 880, 84th Cong., 2d Sess.; 70 Stat. 831-32). Section 202(e) provides for

benefits to the aged widow of the deceased wage earner, and like Section 202(g) provides that such benefits shall end with the month preceding the month in which the widow remarries. By the 1956 amendment, Congress added subparagraph (3) which provides that in the case of a widow who remarries and whose subsequent marriage is terminated by the death of her second husband, but she is not his widow as defined in Section 216(c), then the remarriage shall be deemed not to have occurred. The purpose of this amendment is to reinstate a widow's benefits which were terminated by reason of her remarriage where such remarriage ended within one year because of the husband's death. Sen. Rep. 2133, 84th Cong., 2d Sess. (1956), pages 16-17; H.R. Rep. 2936, 84th Cong., 2d Sess. (1956), page 32. This is the only provision in the Act for reinstatement of benefits after the occurrence of a termination event. It applies only to widow's benefits—not to mother's insurance benefits—and only where the remarriage is terminated by death.

Congress has therefore directed its attention to the specific matter of reinstatement of benefits terminated by remarriage of the beneficiary, and has directed reinstatement only in the case of the aged widow and only where the remarriage terminates by death within one year. The enactment of this one provision for reinstatement after termination of benefits is certainly significant in the present case, where appellee argues, and the court below held, that benefits are to be reinstated after termination, despite the absence of any statutory provision therefor.

We also direct the Court's attention to Section 216(h)(1) of the Act (42 U.S.C.A. 416(h)(1)), in which Congress has directed that in the determination of whether an applicant is the wife, husband, widow, widower, child or parent of a wage earner, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the state in which the wage earner was domiciled at the time of the application or at the time of death. It is significant that Section 216(h)(1) directs the application of domiciliary law only in determining the relationship of an *applicant* to the *wage earner*. Congress has not, therefore, directed the application of domiciliary law—in this case the law of California—to the determination of appellee's relationship to Frank Richard, in order to determine whether she is entitled to reinstatement to benefits as the widow of Delbert Pearsall, the deceased wage earner.[1]

Since there is no Federal law of domestic relations, the usual rules of conflict of laws are applied in determining whether a marriage contracted by a beneficiary under the Act constitutes a valid, voidable, or void marriage. Thus the law of the jurisdiction in which the marriage is contracted determines its

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[1]Especially when read in its context, it is clear that the word "applicant" as used in Section 216(h)(1) of the Act (42 U.S.C.A. 416(h)(1)) refers only to an applicant for an original award of benefits under any of the several subsections of Section 202 of the Act (42 U.S.C.A. 402). This latter section provides in each of its subsections (a) through (i) for a different category of "old-age and survivors insurance benefits" for which an individual may file an "application".

validity. Whether the marriage whose validity is determined by state law constitutes a "remarriage" within the meaning of the Act is a matter of Federal law. Since a voidable marriage, unless and until it is annulled, has all the legal incidents of a valid marriage, we submit that it is such a "remarriage." Its subsequent annulment terminates the remarriage, and even though in certain situations and for certain purposes the marriage is regarded under state law as though it had never occurred, there is no provision in the Act which compels or admits the conclusion that the incidents of the state court decree are incorporated in the Act. Congressional silence on this point, when contrasted with the directive of Section 216(h)(1), is clear indication to the contrary.

Under the law of California, where appellee married Frank Richard, a marriage induced by fraud is voidable only and is not void. 16 *Cal. Jur.,* Marriage, Section 922; 1 *Armstrong,* California Family Law, 41. Until the voidable marriage is annulled, it is a valid subsisting marriage under the law of California and has all the effects of a wholly valid marriage, except only that it is subject to annulment by the institution of appropriate legal proceedings by the injured party. *Estate of Gregorson,* 160 C. 21, 116 P. 60 (1911); *Dunphy v. Dunphy,* 161 C. 87, 118 P. 445 (1911); *McDonald v. McDonald,* 6 C. 2d 457, 58 P. 2d 163, 104 A.L.R. 1290 (1936). Therefore, had Frank Richard died before the dissolution of his marriage to appellee, and had appellee applied for benefits as his widow, she would have been entitled to such benefits if other conditions of entitlement had been met.

Appellee's marriage to Frank Richard therefore affected her status under the Act not only in that it terminated her benefits as the widow of Delbert Pearsall, but also would, except for her action in securing the annulment, have given rise to rights under the Act as the wife or widow of Frank Richard.

There can be no doubt that in this case appellee did in fact contract a marriage with Frank Richard, which she later sought to have dissolved by divorce or annulment. The marriage was in fact annulled on the ground of fraud. Since appellee does not urge that she is entitled to reinstatement as of the date that her benefits were terminated, but only as of the date of the annulment of this marriage to Frank Richard, it seems that appellee herself admits that a remarriage occurred. If a remarriage did occur—and appellant submits that there can be no doubt that such is the case—then benefits can properly be reinstated only if there is provision in the Act authorizing such reinstatement. There is no language in the Act which authorizes such reinstatement, and on the contrary the very language that is employed in Sections 202(g) and 203(b) precludes any inference that such authorization was intended.

B. The court below ignored language of Federal law and construed a Federal term on basis of state law to achieve an illogical conclusion.

The court below discussed various decisions of state courts to the effect that a decree annulling a voidable marriage relates back to the date of the contracting of the marriage, and on the basis of these decisions held that appellee's marriage to Frank Rich-

ard, once annulled, was wiped out, so that the effect was the same as though the marriage had never occurred. Thus the court found that appellee had not remarried, insofar as the appellee's right to reinstatement of mother's insurance benefits *after* the date of the decree of annulment is concerned. Rather illogically (but correctly), the court below held that a marriage did exist until it was annulled, and that appellee was not entitled to mother's insurance benefits during that period. The court therefore held that state court decisions are to determine the meaning of the word "remarriage" in Section 202(g) of the Act.

Once it has been determined under applicable state law, that a voidable marriage has been contracted, the effect of the annulment of such marriage under the terms of the Act is a question of Federal, and not of state law. *N.L.R.B. v. Hearst Publications, Inc.,* 322 U.S. 111, 120-132 (1944). If the effect of the annulment of a voidable marriage were to be determined by the rulings of state courts in cases concerning private rights or rights arising under state laws such as workmen's compensation acts, then the rights of former beneficiaries under the Act would vary from state to state depending on the law of the forum where the annulment proceedings were had, and this although the marriages involved were, in each case, under the law of the state where contracted merely voidable and not void. If the decision of the court below is followed, the Social Security Administration would have the extremely difficult task of having to determine in each case whether or not, in the state

where the former beneficiary's marriage is annulled, the annulment of a voidable marriage is deemed for other purposes to relate back to the date of the contracting of the marriage and of attempting to ascertain which of the situations involving private rights was most nearly analogous in principle to the situation involved in the case arising under Section 202(g). We accordingly submit that in the absence of specific Congressional mandate that beneficiaries of the Act in similar situations be differently treated, depending upon the provisions of different state laws, the Act should be applied with equal effect to all persons within its scope. *N.L.R.B. v. Hearst Publishing Co.,* supra.

In this connection, we would direct the Court's attention to the decision in *Hahn v. Gray,* 203 F. 2d 625 (C.A.D.C. 1953). The plaintiff therein had been receiving a pension as the unremarried widow of a veteran. When she remarried, the pension was discontinued pursuant to regulations of the Veterans' Administration. A New York court annulled the second marriage on the ground that it had been obtained by fraud and she then applied for restoration of the pension. The Administrator of Veterans' Affairs denied the application, and was affirmed by the Court of Appeals for the District of Columbia. We cited the *Hahn* case to the District Court in our motion for summary judgment herein, but the latter distinguished the opinion on the ground that it was based entirely on a jurisdictional point, and that the portion dealing with the annulment question was entirely dicta. 138 F. Supp. 939, at 941. Even if this portion were dicta, it should

be very persuasive as coming from a United States Court of Appeals. Actually, however, the portion concerning the decree of annulment is not dicta but is one of the grounds of the decision. The opinion in the *Hahn* case holds that a voidable marriage constitutes a remarriage, so that the plaintiff therein was no longer the unremarried widow of the veteran. We accordingly submit the *Hahn* decision as valid authority in the present situation.

Appellee does not contend that she did not marry Frank Richard, and in fact has recognized that a marriage did exist with Richard until it was annulled, as she has not sought reinstatement of benefits as of the date of the termination of the benefits but only as of the date as of the annulment of the marriage. In fact, appellee's counsel stated that "It is true that claimant's status did change upon her going through a second marriage ceremony" (Adm. Tr. 4), and that such marriage was not void but merely voidable (Adm. Tr. 18). It should be noted moreover, that in the same action in which appellee sought annulment of her voidable marriage, she asked in the alternative for a dissolution of that marriage by divorce. The court below agreed that appellee was married to Richard until the decree of annulment and stated that appellee should not be allowed to claim against the Social Security Trust Fund for the period of the second marriage before its annulment.

Thus we have a situation in which, in the face of the indisputable fact that appellee married Richard and for six months was his lawful wife, the court be-

low, on the basis of the fiction of "relation back" of the decree of annulment, nevertheless ruled that her marriage to Richard did not constitute a "remarriage" within the meaning of the Act.

The court below also relied on four state court decisions in workmen's compensation cases. These cases do not in fact support the decision below. In the first place, there is great variation in state workmen's compensation laws, and remarriage is ordinarily not a ground for termination. 58 *Am. Jur.,* Workmen's Compensation, Section 187. Secondly, the purpose of such laws is to shift from the public generally to the employer the burden of relieving the economic dependency caused by industrial accidents, and the interpretation of such laws has been rejected as a guide for the interpretation of the Act. *Sanders v. Altmeyer,* 58 F. Supp. 67 (W.D. Tenn. 1944). For example, the statute which was construed by the Indiana court in *Eureka Block Coal Co. v. Wells,* 83 Ind. App. 181, 147 N.E. 811 (1925), provided that the *dependency* of the widow terminated on her remarriage, and *Southern Ry. Co. v. Baskette,* 175 Tenn. 253, 133 S.W. 2d 498 (1939) was decided on the basis of the *Eureka Block Coal Co.* decision, without any discussion of the provisions of the Tennessee law. The decision in *First Nat'l Bank v. North Dakota Workmen's Comp. Bureau,* ..... N. D. ....., 68 N.W. 2d 661 (1955), clearly shows how irrelevant the decisions dealing with workmen's compensation laws are to the present case, for the North Dakota law specifically recognizes the reinstatement of widow's

benefits if her remarriage is annulled, if the action for annulment is filed within six months of the marriage. So, benefits of an incompetent dependent child were there reinstated when her marriage was annulled. The decision in *Southern Pacific Co. v. Industrial Commission et al.,* 51 Ariz. 1, 91 P. 2d 700 (1939), presents perhaps the most nearly analogous situation; but even there it must be recognized that the workmen's compensation law is designed to relieve the needs of the deceased wage earner's dependents. Dependency, rather than status, is determinative of the right to such benefits.

II.

THE COURT BELOW ERRED IN ITS INTERPRETATION OF STATE COURT DECISIONS.

In its memorandum opinion, the court below relied heavily on the case of *Sleicher v. Sleicher,* 251 N.Y. 366, 167 N.E. 501 (1929), and distinguished the later New York decision in *Gaines v. Jacobsen,* 308 N.Y. 218, 124 N.E. 2d 290 (1954), on the ground that the state law had meanwhile been amended to provide for the support of the wife in appropriate cases where a voidable marriage was annulled. In the *Sleicher* case, the New York Court of Appeals had held that where a divorced wife's remarriage was annulled, the first husband's obligation of providing alimony under a separation agreement and a foreign divorce decree until her remarriage was revived by the annulment as of the date of the annulment. The *Gaines* case, on the

contrary, held that the annulment of a divorced wife's remarriage did not revive, even prospectively, the obligation of her first husband under a separation agreement providing for payments for her support "until she shall remarry".[2] The court below reasoned that since there was no provision in California law for requiring the husband to support the wife after his voidable marriage to her was annulled, the earlier *Sleicher* case was still valid authority as to the effect to be given to the annulment of a voidable marriage in California. However, the opinion in the *Gaines* case shows clearly that the New York Court of Appeals expressly disapproved of the reasoning in the *Sleicher* case, even apart from the effect of the New York amendment which had subsequently been enacted. Moreover, in the *Sefton* case, infra, the Supreme Court of California discussed both the *Sleicher* case and the *Gaines* case and concluded its discussion thereof as follows:

> "It is obvious that the reasoning in the Gaines case has deprived the Sleicher case of any present persuasive authority." (45 C. 2d at 878, 291 P. 2d at 443).

The court below relied also on language of the California Supreme Court in *McDonald v. McDonald,* 6

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[2]Note that the remarriage in the *Gaines* case, which terminated the first husband's obligation to support, was bigamous and void. See also, *Keeney v. Keeney,* 211 La. 585, 30 So.2d 549 (1947), wherein a *void* marriage terminated the first husband's obligation to pay alimony under Louisiana Civil Code, Art. 160, which provides alimony shall be "revocable * * * in case the wife should contract a second marriage." *A fortiori* a voidable marriage, whether or not it is annulled, terminates the obligation to support or pay alimony.

C. 2d 457, 58 P. 2d 163 (1936), to the effect that a decree annulling a voidable marriage determines that no valid marriage ever existed.

Because of such reliance by the court below on the *Sleicher* and *McDonald* cases, the appellant moved for reconsideration on the basis of the more recent decision of the Supreme Court of California in *Sefton v. Sefton,* 45 C. 2d 872, 291 P. 2d 439 (1955). In our memorandum of reasons and authorities for the motion, we summarized the holding of the *Sefton* case as follows:

> "In the *Sefton* case, the Supreme Court of California held that where a wife had been granted a divorce with alimony to continue until her remarriage, and thereafter married another man—which remarriage was later annulled—the wife's voidable marriage was a 'remarriage' within the provisions of California Civil Code, Section 139. That section provides in pertinent part:
>
> > 'Except as otherwise agreed by the parties in writing, the obligation of any party in any decree, judgment, or order for the support and maintenance of the other party shall terminate * * * upon the remarriage of the other party.'
>
> "The California court held therefore that the annulment decree did not revive the first husband's obligation to pay alimony notwithstanding that the annulment decreed the remarriage as 'null and void'." (R. 27-28).

The court below, in its supplementary memorandum opinion (R. 31) observed:

> "The question now before the court, is what if any is the import of the Sefton decision. Does

> that decision control the issue in the instant case, namely, when is a widow to be considered 'remarried' within the provisions of Section 202(g) of the Social Security Act?" (138 F. Supp. at 944).

It then proceeded to reject the *Sefton* case and to affirm its prior decision in favor of the present appellee. R. 33; 138 F. Supp. at 944.

It should be clear that neither the *Sefton* decision, nor any other state court decision, should determine when a widow is to be considered remarried within the meaning of Section 202(g) of the Act. The effect of the Federal law should not be made dependent on the interpretations of various state laws by various state courts. We cited the *Sefton* case to the court below only because it so clearly shows that the law of California, upon which the court had relied in its memorandum opinion, was not as the appellee contended nor as the court had construed.

The *Sefton* decision clearly shows that insofar as the law of California is concerned, the annulment of a voidable marriage does not expunge that marriage from the record. Rather, it shows that the voidable marriage existed until annulled, and that the effect to be given to an annulment varies from case to case, depending on the circumstances and the persons concerned. The following excerpt from the decision in the *Sefton* case demonstrates that in no case will the fiction of the "relation back" of the decree of nullity be invoked to the prejudice of third parties who were not party to the annulment proceedings:

> "* * * the doctrine of 'relation back' is not without its exceptions. The doctrine was fashioned by our courts to do substantial justice *as between the parties to a voidable marriage.* It is a mere legal fiction which has an appeal when used as a device for achieving that purpose. * * *
>
> "However, in cases involving the rights of third parties, courts have been especially wary lest the logical appeal of the fiction should obscure fundamental problems and lead to unjust or ill-advised results respecting a third party's rights." (45 C. 2d at 875, 291 P. 2d at 441; italics ours.)

Yet this is precisely what the court below did—by holding that the decree annulling appellee's marriage related back to the date of the contracting of the marriage, the court adversely affected the rights and obligations of appellant, and particularly of the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund, which is established by Section 201 of the Act (42 U.S.C.A. 401).

Moreover, the court below also overlooked the fact that its jurisdiction is confined to reviewing the appellant's decision pursuant to the provisions for judicial review specified in Section 205(g) of the Act (42 U.S.C.A. 405(g)) and that a Federal District Court has no power to exercise the functions of a state court, particularly discretionary functions which the state court might or might not exercise in a particular case. Thus, assuming *arguendo* that a state court in a case involving the question as to whether or not it should apply the fiction of "relation back" to the appellee's decree of annulment would have decided to

apply that fiction as between the appellee and Richard or a third party over whom it had jurisdiction, it would seem obvious that not even a state court could have applied that fiction so as to affect the rights of a third party over whom it had no jurisdiction. It would necessarily follow, therefore, that the court below, exercising the limited jurisdiction conferred by Section 205(g) of the Act, supra, was not empowered to apply the fiction of "relation back" so as to give appellee's decree of annulment an effect adverse to the rights of the Secretary of Health, Education, and Welfare or of the Trustees of the Federal Old-Age and Survivors Insurance Trust Fund.

III.

THE DECISION OF COURT BELOW DOES PREJUDICE TO RIGHTS OF DEFENDANT AND OF POSSIBLE INNOCENT THIRD PARTIES.

It should be clear that the fiction of "relation back" of a decree of annulment of a voidable marriage could not in any case be applicable in the present situation because of Section 86 of the Civil Code of California, which provides:

> "A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them."

Also, it should be clear that the Social Security Administration was neither a party to the action in which appellee secured the annulment of her marriage nor did the Social Security Administration claim any

right derived from either party to that action. In *Price v. Price,* 24 C.A.2d 462, 75 P.2d 655 (1938), which we cited below, the judgment of the Superior Court of the State of California, in and for the County of Los Angeles, annulling a marriage contracted in Mexico by a divorced woman with a person other than her divorced husband, was held not conclusive as to the divorced husband. The District Court of Appeal accordingly held that, regardless of the validity of the judgment annulling the marriage, the divorced husband was not obliged to continue payments to his divorced wife under the separation agreement after the date of the remarriage in Mexico. The court below, in its memorandum opinion, stated that in the *Price* decision the court had examined the validity of the decree of annulment and found that the judgment was granted by a local court for a cause not authorized by California law, and that the District Court of Appeal therefore held that the third party, her husband by her first marriage, was not bound by the decree. In the instant case, the court below pointed out that appellee's second marriage was annulled on a ground which is proper under the California laws.

We respectfully direct the attention of this Court to the statement of the District Court of Appeal in the *Price* case:

> "Regardless of the question of the right of the superior court in Los Angeles to render a judgment of nullity of the marriage contracted in Mexico insofar as it concerns plaintiff and Bergstedt, *a question we consider unnecessary to de-*

> *cide,* we are satisfied that the decree is not conclusive as to defendant in the present litigation, is not binding upon him, and does not have the effect of obligating him to carry out the terms of the property settlement agreement." (24 C.A. 2d at 467; 75 P.2d at 658; italics ours.)

It is obvious that the District Court of Appeal specifically refused to determine whether the decree of nullity was properly granted and squarely placed its decision upon the ground that such decree could not be binding on a third party, the plaintiff's former husband. The decision of the District Court of Appeal in the *Price* case is approved by the California Supreme Court in *Sefton v. Sefton,* supra, where the latter court, citing the *Price* case, pointed out that a legislative caveat against the doctrine of "relation back" of a decree of annulment may fairly be inferred from Civil Code Section 86 (45 C.2d at 876; 291 P.2d at 441).

The court below also sought to avoid the effect of Section 86 of the California Civil Code by holding that policy considerations are in favor of the appellee in that she had acted in good faith and no one, including the defendant, would be injured by reinstating her mother's insurance benefits. As stated above, this is also the basis upon which the court below held that the rationale of the *Sefton* case was not applicable in the present situation.

It is difficult to understand what is meant by the statement of the court below that "it is clear that defendant has not been prejudiced." 138 F. Supp. at

944. That defendant, appellant herein, is charged by Congress with the duty of administering the provisions of the Act and has the duty to carry out the mandate of Congress that a woman who is awarded "mother's insurance benefits" shall not receive such benefits later than the month last preceding the month in which she remarries. The appellee remarried and by the very terms of the Congressional enactment, her entitlement to benefits ceased. The appellant is obviously and necessarily prejudiced by an order that he reinstate those benefits contrary to express Congressional mandate. The mere availability of funds to make the payment in question is irrelevant. The fact that appellee, had she not remarried, would have continued receiving mother's insurance benefits does not justify the payment to her of benefits when she has in fact remarried.

Moreover, those portions of the opinions of the court below which are based upon the references to the availability of Social Security funds for further payments to appellee had she not remarried, as an argument for reinstatement of benefits upon the annulment of the marriage, should by parity of reasoning apply also to the situation where the remarriage is terminated by divorce or death. We think it is too obvious to require discussion that the Act does not provide for reinstatement of benefits where the remarriage of a widow terminates by divorce or death.

There is certainly no logic in the argument that the appellee, because she was an innocent party, should be entitled to reinstatement of benefits. As be-

tween two innocent parties, certainly no preference can be given to that party who has been active in effecting a change in the situation. In addition, if benefits are to be reinstated in the present case, it would appear that the innocence or fault of the appellee is entirely irrelevant. There is as much justification in the language of the Act for reinstating mother's insurance benefits where the remarriage is induced by the fraud of the beneficiary as where it is induced by the fraud of the other spouse. In either case, the appellant had no part in the fraudulent action and claims no rights derived from either party to the fraudulent action.

Moreover, under the decision of the court below there frequently would be cases in which innocent third parties other than the appellant herein would be seriously prejudiced. There might well be many cases in which children who had been awarded and were receiving "child's insurance benefits" under Section 202(d) of the Act (42 U.S.C.A. 402(d)) would be adversely affected by the reinstatement of the remarried widow to mother's insurance benefits. The total monthly benefits payable on the account of any one wage earner cannot exceed 80 per cent of the wage earner's average monthly wage or 1½ times his primary insurance amount, whichever is the greater, and in no case may the total exceed $200. Section 203(a) of the Act (42 U.S.C.A. 403(a)). In many cases a wage earner is survived by a widow and several minor children. The 1956 amendments of the Act (P.L. 880, 84th Congress, 2d Session, Section

101(a); 70 Stat. 807), also authorize benefits in the future for disabled children over the age of 18. When the widow remarries and her benefits are thereby terminated, the benefits awarded to the children may be correspondingly increased. If, upon the annulment of a voidable marriage of the widow she becomes entitled to have her benefits reinstated, it would then necessarily follow that the increased award of benefits to the children would have to be reduced. The situation would be particularly prejudicial where the children were not all in the care of the widow of the wage earner. The wage earner might well leave several children, one or more of whom might be cared for by some one other than the wage earner's widow. In fact, the wage earner might leave children by a former marriage who are cared for by his former divorced wife who is herself entitled to receive mother's insurance benefits so long as she has not remarried and has a child of the wage earner in her care and meets the other conditions of entitlement prescribed by Section 202(g) of the Act (42 U.S.C.A. 402(g)).

While in the present case no reduction of benefits to the wage earner's child would be necessitated upon the reinstatement of the appellee to mother's insurance benefits, this is due to the fortuitous circumstance that the wage earner was survived by only one child eligible for child's insurance benefits. Had he been survived by the appellee and three children entitled to child's insurance benefits, the latter would have been reduced by the entitlement of the appellee and, hav-

ing been increased when her entitlement terminated, would again have to be reduced under the decision of the court below.

IV.

THE DECISION BELOW MISAPPLIES THE PRINCIPLE OF LIBERAL CONSTRUCTION OF WELFARE LEGISLATION.

The court below, in both its memorandum opinion and its supplemental memorandum opinion, reasoned that the Act is entitled to a liberal construction and that the refusal to reinstate the appellee to mother's insurance benefits would be contrary to the liberal construction which has in other cases been accorded the Act. The court reasoned that policy considerations favored such a construction. 138 F. Supp. at 943 and 944.

We submit that the court below misapplied the rule of liberal construction. The same argument has been urged in other cases by applicants or beneficiaries of the Act in an effort to secure an interpretation contrary to its express terms. Such arguments, however, have not been successful. For example, in *Ewing v. Risher,* 176 F.2d 641 (10th Cir. 1949), the argument was rejected at page 664 on the grounds that the Congressional purpose must be ascertained from the clear language of the Act and that no liberal interpretation warrants the adoption of a construction inconsistent with the clear wording of the Act. See also *Moncrief v. Hobby,* 133 F.Supp. 152 (D.Md. 1955), wherein it is clearly stated that courts are not justified in chang-

ing the wording of the law to meet a particular situation even where it might plausibly be thought that the legislative body might have changed the wording had the particular situation been contemplated:

> "On the contrary, where the language of the statute is plain and unambiguous and does not result in absurd or obviously unintended results, courts are not at liberty to make substitution in language to meet the supposed equity of a particular case." (133 F.Supp. at 158-159.)

This decision was later affirmed sub nom. *Moncrief v. Folsom,* 233 F.2d 471 (4th Cir. 1956).

The court below ignored this principle in the name of liberal construction by reading into the Act a proviso that in the event of the subsequent annulment of the widow's remarriage, entitlement to benefits which had terminated upon her remarriage should be reinstated even though the parties were lawfully husband and wife during the period of the voidable marriage.

As we have previously stated, this is a case of first impression. In such a case, the interpretation of a law by the agency to which Congress has entrusted its administration is entitled to weighty consideration. For example, in *U.S. et al. v. LaLone et al.,* 152 F.2d 43 (1945), involving the interpretation of other sections of the Act, this Court stated at page 45:

> "The (Social Security) board's decisions interpreting the Act and regulations are entitled to weight; the board's findings of fact, if supported by substantial evidence, are conclusive."

The Supreme Court of the United States in *Hormel v. Helvering,* 312 U.S. 552 (1941) said in footnote 5 at page 556:

> "The Board's rulings on questions of law, while not as conclusive as its findings of fact, are nevertheless persuasive * * *. This is true not only of the Board of Tax Appeals but of other administrative bodies as well."

And in *Jack Adelman, Inc. v. Sonners & Gordon, Inc.,* 112 F.Supp. 187, (S.D. N.Y. 1934), that court stated at page 189:

> "This administrative interpretation of the law is, of course, not conclusive, but it is entitled to weighty consideration."

In the present case there is no dispute as to the facts. The findings of the referee, which constitute the findings of the appellant's predecessor as Secretary of Health, Education, and Welfare, are supported by substantial evidence and therefore conclusive under Section 205(g) of the Act (42 U.S.C.A. 405 (g)). Even where there is no dispute as to the evidentiary facts, a court may not substitute its inferences and conclusions therefrom for those of the administrative agency:

United States et al. v. LaLone et al., supra;

Walker v. Altmeyer et al., 137 F.2d 531 (2d Cir. 1943);

Livingstone v. Folsom, 234 F.2d 75 (3d Cir. 1956);

Social Security Board v. Warren, 142 F.2d 974 (8th Cir. 1944).

We submit that the District Court, in determining the legal effect of the admitted facts in this case, not only failed to give any weight to the administrative interpretation of the statute, but in the name of "liberal construction" ignored clear provisions of the Act and *added* thereto a provision which has no support in Congressional language or policy.

CONCLUSION.

For all of the foregoing reasons, we submit that the District Court erred in holding that the appellee was entitled to reinstatement of mother's insurance benefits upon the annulment of her remarriage on the ground that it was a voidable marriage. The judgment of the District Court should therefore be reversed by this Court.

Respectfully,

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